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JONES DAY
51 Louisiana Avenue, N.W.
WASHINGTON DC 20001-2113

In re Application of
John B. Zapushek
Application No. 09/780,536
Filed: February 12, 2001
For: PIN LOCKING DEVICE AND METHOD
OF LOCKING

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in response to applicant's petition to withdraw the holding of abandonment filed February 6, 2004.

The petition is **DISMISSED**.

The application was held abandoned for failure to timely respond to the final Office action mailed June 23, 2003 and a Notice to that effect was mailed January 7, 2004.

Petitioner states that a Revocation and Power of Attorney/Change of Address was filed on May 20, 2002 and provides a copy of the request along with a postcard receipt stamped May 31, 2002. The petition alleges that the Office erred in mailing the Office action to the wrong address.

A review of the file reveals that the Revocation noted above is not present in the file wrapper. However, even if the request had been entered into the file, it would not have been approved because the request, signed by the "assignee", lacked a statement in accordance with 37 CFR 3.73(b) providing documentary evidence of a chain of title from the original owners to the assignee or a statement specifying where this evidence is recorded in the Office (e.g., reel and frame number).

Since the Revocation/Change of Address cannot be relied upon to show that the Office action was mailed to the incorrect address, the petition for withdrawal of the abandonment on that basis is **DISMISSED**.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37

CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$110. The fee for a petition under the unintentional standard is \$1,330. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."

Further correspondence with respect to a petition to revive should be addressed as follows:

By Mail: Deputy Commissioner of Patent Examination Policy
Box 1450
Alexandria, VA 22313-1450

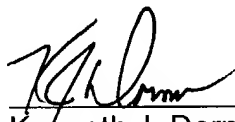
By Fax: (703) 308-6916
Attn: Office of Petitions

By Hand: Crystal Plaza 4, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9282.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

The application will be forwarded to the Files Repository to await any request for reconsideration applicants may wish to submit.



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Special Programs Examiner
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KJD/mjz: 6/1/04

cc:

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